

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Section 105.5, and Repeal Subsection 195(e),  
Title 14, California Code of Regulations (CCR)  
Re: Cooperation with State and Federal Fishery Observers

- I. Date of Initial Statement of Reasons: October 2, 2002
- II. Date of Pre-adoption Statement of Reasons: November 7, 2002
- III. Date of Final Statement of Reasons: December 20, 2002
- IV. Dates and Locations of Scheduled Hearings:
- (a) Notice Hearing: Date: August 30, 2002  
Location: Oakland, CA.
- (b) Adoption Hearing Date: December 20, 2002  
Location: Sacramento, CA.
- V. Update:
- No modifications were made to the originally proposed language of the Initial Statement of Reasons.
- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:
- Responses to public comments received prior to the adoption hearing were included in the Pre-adoption Statement of Reasons which is incorporated here by reference. The only comments received at the adoption hearing were provided by Mr. Paul Weakland. Mr. Weakland's comments reiterated the same concerns that he expressed at the August 30, 2002 meeting which are responded to in the Pre-adoption Statement of Reasons.
- VII. Location and Index of Rulemaking File:
- A rulemaking file with attached file index is maintained at:
- California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: Alternatives considered to the regulation change primarily involve efforts to encourage voluntary compliance with at-sea observer programs. This includes emphasizing the importance of the data collected in sustaining viable populations of fish and the fisheries. However, with the increasing need to adopt management measures to sustain viable fisheries, there is increasing concern by some fishery participants that data collected on their vessels will be used to further curtail fishing, which has occurred in the case of overfished stocks. The immediate effects on the fishery of further constraints on fishing are overshadowed by the need to maintain renewable resources that will provide greater cumulative value to the fishery in the long term if maintained at sustainable levels through sound management based on accurate fisheries data collected according to scientific protocols.
- (b) No Change Alternative: This alternative does nothing to address the current need to maintain an appropriate level of at-sea collection of fishery data through full cooperation by fishery participants.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

Generally, participants in the commercial sectors of the nearshore fishery are

small business operators. The commercial fishery is conducted from a variety of small to large sized vessels that utilize a variety of fishing gear in coastal waters.

The proposed regulations that have already been adopted on an emergency basis do not require the vessel operator to or owner to provide an observer with meals or a subsistence allowance on observed fishing trips, but do require that the observer be accommodated with regard to reasonable eating and working conditions. These requirements are not expected to result in significant adverse economic impacts to affected businesses.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

(e) Nondiscretionary Costs/Savings to Local Agencies: None

(f) Programs mandated on Local Agencies or School Districts: None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None

(h) Effect on Housing Costs: None

## Updated - Informative Digest (Plain English Overview)

Under existing law, State and federal regulations exist to manage groundfish species including rockfish and lingcod. These regulations include State and federal provisions for the placement of fishery observers aboard commercial fishing vessels. Also under existing regulations, lingcod and at least six species of rockfish (bocaccio, cowcod, canary, yelloweye, darkblotched, and widow rockfishes) have been declared overfished off California, and subject to rebuilding requirements as directed under the Magnuson-Stevens Sustainable Fisheries Act. Also under existing law, nearshore rockfish and associated species that are being subjected to increased fishing by commercial and sport fisheries, are directed to be managed on a sustainable basis, that include the setting of annual harvest limits. On August 30, 2002, the Fish and Game Commission (Commission) adopted emergency regulatory changes to ensure cooperation with at-sea fisheries observers that collect vital fisheries information from which to assess effects of the fishery on important fish stocks.

Annual assessments of the status of shelf and nearshore groundfish stocks depend on the collection of data, including information on fisheries bycatch and discards that is collected by fishery observers from vessels while at sea. Some owners and operators of fishing vessels that are fishing for State-managed species or for which a federal permit is not required are refusing to participate in ongoing observer programs that collect this vital information. To deal with this problem so that blocks of vital fishery data are not lost, and the integrity of dependent fisheries assessments is not compromised, regulatory action is proposed to require that owners and operators of commercial fishing vessels permitted under regulations of the Commission, and commercial passenger fishing vessels licensed pursuant to Fish and Game Code Section 7920, will, as a condition of permit or license issuance, cooperate with Department or Federal fishery observers, or observers collecting data for the Department, when asked to carry and accommodate an observer on fishing trips at no cost to the sponsoring agency. The Department may request revocation of fishing permits or licenses by the Commission for denials for observer access where the denials are deemed uncooperative in nature, after first allowing the owner or operator to meet with the Manager of the Marine Region or his/her representative, to provide an explanation of the denial. The regulations also include provisions for requiring a vessel owner or operator to provide explanation in writing within 15 days of a written request by the Department where an observer is denied access (coverage) on a trip. The proposed regulations provide that a Department or federal request to place an observer aboard shall not include a requirement that the vessel owner or operator provide an observer with meals or a subsistence allowance, but require that they shall accommodate the observer with regard to reasonable eating and working condition and access to pertinent fishing information and fishery data while aboard the vessel. Failure to provide such reasonable access may lead to revocation of vessel fishing permits or licenses issued under regulations of the Commission. The proposed regulations make it unlawful to assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with an observer, or otherwise interfere with or bias sampling procedures,

tamper with, destroy or discard an observer's collected samples, equipment, or gear, or require the observer to perform duties normally performed by crew members. These proposed regulations follow the recent adoption and approval of emergency regulations to make the regulations permanent and effective during 2003 and beyond.

## Regulatory Language

Repeal Subsection (e) of Section 195, Title 14, CCR, as follows:

~~(e) Owners and operators of vessels and barges subject to these provisions shall carry and cooperate with department and federal fishery observers, and observers collecting data for the department on trips when space is available, at no charge to the sponsoring agency. If observer coverage of a trip is denied by the owner or operator of a vessel, the department may require an explanation in writing by the owner or operator be submitted to the department within 15 days of the department's request for an explanation.~~

### NOTE

Authority cited: Sections 7071, 7923 and 8587.1, Fish and Game Code. Reference: Sections 7923 and 8587.1, Fish and Game Code.

Adopt Section 105.5, Title 14, CCR, as follows:

### Section 105.5 Cooperation with State and Federal Fishery Observers

(a) Owners or operators of commercial fishing vessels permitted under regulations of the Commission, and commercial passenger fishing vessels licensed pursuant to Fish and Game Code Section 7920, will, as a condition of permit or license issuance, cooperate with Department or Federal fishery observers, or observers collecting data for the Department, when asked to carry and accommodate an observer on fishing trips at no charge to the sponsoring agency.

(b) If observer coverage of a trip is denied by the owner or operator of a vessel, the Department may require an explanation in writing from the owner or operator. This explanation shall be received by the Department within 15 days of written request by the Department for an explanation.

(c) The Department may request revocation of fishing permits or licenses to the Commission for denials that it deems to be uncooperative in nature, after first allowing the owner or operator to meet with the Manager of Marine Region, or his representative, to provide an explanation for the denial.

(d) The Department or Federal agency requesting cooperation under subsection (a) shall not require the vessel operator or owner to provide an observer with meals or a subsistence allowance on observed fishing trips, but shall accommodate the observer with regard to reasonable eating and working conditions and access to pertinent fishing information and fishery data while aboard the vessel.

(e) Failure to provide reasonable eating and working conditions or access to pertinent fishing information or fishery data to observers, or actions taken by a vessel owner or operator against an observer that is prohibited pursuant to subsection (f), on observed fishing trips may lead to revocation of the vessel's fishing permits or licenses issued under regulations of the Commission following the procedure outlined in subsections (b) and (c) above.

(f) To ensure that observer objectives may be reasonably and safely achieved, consistent with federal groundfish observer rules, it is unlawful for any person to do any of the following:

(1) forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with an observer,

(2) interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of any catch before sampling.

(3) tamper with, destroy or discard an observer's collected samples, equipment, or personal gear, without the express consent of the observer,

(4) prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer collecting samples, making observations, or otherwise performing the observers duties,

(5) harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile or offensive environment,

(6) require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members.

NOTE

Authority cited: Sections 1006, 7071, 7652, 7923, 8405.3, and 8591, Fish and Game Code. Reference: Sections 7055, 7056, 7058, 7071, 7923, and 8587 Fish and Game Code.